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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Hawaii state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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Antidote: Civic Responsibility

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Lesson 1

1. **Has Aimee violated any state laws? Have her parents?**

   Aimee has violated no Hawaii law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

   Aimee and Carrie's parents, however, may be violating Hawaii law. One has endangered the welfare of a minor if s/he, being the parent, guardian or other person whether or not charged with the care or custody of such a minor, knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor. Haw. Rev. Stat. §709-904 (1) (1985). The parent have a duty provide care, shelter and supervision to their children. If the girls are left alone for lengthy periods of time the parents are likely to be in violation of this statute. If their lack of supervision is gross they may ultimately lose custody of the children.

2. **Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?**

   Minors, persons under 21 years old, may not possess or have custody of liquor in any public place. Haw. Rev. Stat. §281-101.5 (1992). This technically does not prohibit Tyrell from drinking wine at dinner. Haw. Rev. Stat. §712-1250.5 (1992), however, makes it unlawful for any person to permit a minor to possess intoxicating liquor while on property under his/her control. Tyrell's parents have an obligation to not allow Tyrell to possess alcohol, let alone consume it. They will be held responsible for his possession, thus, while Tyrell may not be directly barred from private consumption, his parents' rules may be more severe than any legal rules.

3. **Is Maria violating any law when she tells her roommates whom to call to buy marijuana?**

   It is unlawful to possess, sell or barter a detrimental drug (which includes marijuana) in Hawaii. Haw. Rev. Stat. §712-1247 (1985). By assisting her roommates acquire marijuana Maria was violating the law. One is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime 1) s/he agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense, and 2) s/he or another with whom s/he conspired commits an overt act in pursuance of the conspiracy. Haw. Rev. Stat. §705-520 (1985). Since Maria helped her roommates advance their desire commit an illegal act, she can be charged with criminal conspiracy.

4. **Have Adam and Alex broken any laws other than those against drinking and fighting?**

   Since Joe died as a result of his interaction with Adam and Alex the twins will likely be charged for their involvement in his death. Two possible charges the twin face are

manslaughter and assault. Manslaughter occurs when one recklessly caused the death of another. Haw. Rev. Stat. § 707-702 (1985). Assault in the first degree is occurs if one intentionally or knowingly causes serious bodily injury to another. Haw. Rev. Stat. §707-710 (1985). Assault in the second degree occurs if one intentionally or knowingly causes bodily injury to another with a dangerous instrument or recklessly causes bodily injury to another with a dangerous instrument. Haw. Rev. Stat. § 707-711 (1985). The twins could be charged with any of these crimes, but the specific facts of the case and their apparent culpability will determine the actual charge brought. All are felony charges. It is possible that the charge brought be only a misdemeanor or that no charges be brought at all.

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Jose is in violation of Hawaii law even though he is not drinking and, in fact, acting as the designated driver. Hawaii law prohibits open containers from being in vehicle on the roads of the state. Haw. Rev. Stat. §291-3.3 (1992). TJ and Carlos are also in violation of this law for having open containers of alcohol in a vehicle. Further, Jose is a minor (under 21). It is unlawful for a minor to have in his possession or custody in any motor vehicle on a public highway or in any public place any liquor. Haw. Rev. Stat. § 281-101.5 (1992). TJ is also in violation of this law. Carlos, the only participant over 21, may also be charged with a violation of Haw. Rev. Stat. § 712-1250.5(1)(b) (1992) which prohibits a person from knowingly permitting a minor from possessing intoxicating liquor while on property under his control. Carlos' guilt will depend on whether they were ever on property Carlos was considered to be in control of. Finally, Carlos will be charged with violation of Haw. Rev. Stat. § 281-78(a) (1992) for consuming liquor on a public highway.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. §843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Dr. Melrose is also violating Hawaii law. A physician is subject to Haw. Rev. Stat. §329-38 which discusses the criteria which must be met for prescriptions to be effective. The section states that a prescription for a controlled substance must be issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice.

Violation of this section is a violation of the Uniform Controlled Substance Act according to Haw. Rev. Stat. §329-41 (1992). Violators may be imprisoned for up to 5 years and/or fined up to $5000. Id. Diverting to unauthorized use any controlled substance by a person responsible for lawfully handling drugs is a further violation of Hawaii law. Haw. Rev. Stat. §329-42(6) (1992).

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is also violating Hawaii law which makes it unlawful for a person to possess, sell or barter harmful or dangerous drugs. Haw. Rev. Stat. §§712- 1240 to 712-1247 (1992). The charge brought against her will depend on the drug(s) she was taking, the quantity and what she did with those drugs. She is violating the law further by obtaining possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Haw. Rev. Stat. §329-42(3) (1992). Since Danielle was in position of trust by virtue of her position, she violated that position by taking drugs from the prescriptions and thus, violated the law.

8. **Is Renee breaking any law even though she is not selling drugs herself?**

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. §841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Hawaii law further prohibits possession, sale or bartering of dangerous, detrimental and/or harmful substances. Haw. Rev. Stat. §§712-1240 - 712-1247 (1992). Distribution of any harmful or dangerous drug to a minor is an additional violation under the same code section. Thus, Renee's use of her child will further enhance her violation of the law.

9. **Did Jim violate any law other than those regarding controlled substances?**

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. §844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Hawaii has not yet dealt with the criminal ramifications of this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault, or the attempt thereof, or reckless endangerment. Under certain extreme situations it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

10. **Has the bartender or owner of Bulldog's Bar & Grill violated any law?**

Hawaii law prohibits a licensee (ie: Bulldog's) or its employee from at any time, under any circumstances, selling or furnishing liquor "to any person at the time under the influence of liquor," Haw. Rev. Stat. §281-78(b)(1)(B) (1992) or "knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises." Haw Rev. Stat. §281-78(b)(5) (1992). Violation of these regulations could result in a loss of Bulldog's liquor license.

Lesson 2

CRIMINAL JUSTICE STATISTICS:
DRUG AND ALCOHOL RELATED OFFENSES
UNIFORM CRIME REPORT DATA OF 1990–CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990
A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2

[3] Massachusetts calls their schedules classes, but they are the same thing.

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	■ imprisonment not to exceed 20 years with minimum length set by paroling authority, and ■ fine not to exceed $50,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	■ imprisonment not to exceed 20 years with minimum length set by paroling authority. and ■ fine not to exceed $50,000
First Offense: Codeine - Possession - 200 mg	■ imprisonment not to exceed 10 years, and ■ fine not exceed $10,000
Second Offense: Marijuana - Possession - 50 kg	■ imprisonment for 1 year, 8 months to 10 years, and ■ fine not to exceed $10,000
Third Offense - Methamphetamine - Possession - 100 g	■ imprisonment for 3 to 10 years, and ■ fine not to exceed $10,000

Cite: HRS §712-1241

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §291-4 it is unlawful for any person to drive while under the influence of intoxicating liquor or with a blood alcohol concentration of 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

Hawaii law does not distinguish between DWI or DUI.

4. **What are the penalties for being convicted of DWI? DUI?**

CONVICTIONS	PUNISHMENT
first conviction	♦ attend an alcohol abuse rehabilitation program for a minimum of 14 hours, and ♦ license suspension for 90 days ♦ any of the following: (1) 72 hours of community service or (2) 48 hours to 30 days in jail or (3) a fine of $150 to $1000.
second conviction within 5 years	♦ suspension of license for 1 year, and ♦ either (1) at least 80 hours of community service or (2) a fine of $500 to $1000.
third conviction with 5 years	♦ suspension of license for 1 to 5 years, and ♦ a fine of $500 to $1000, and ♦ jail for 10 days to 180 days.

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §286.151 any person who drives on the roads of Hawaii consents to a breathalyzer test. In accordance with §286-155.5, if an arrested person refuses to take the test, none shall be given, but the person's driver's license shall be terminated. The person will be given a temporary permit until the court reviews the decision to terminate the license. Within eight days the court must either rescind the decision or terminate the license for a period corresponding with the proper conviction (see above) of DWI § 286-257 and 258.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated?**

A BAC of 0.10 indicates legal intoxication in Hawaii.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Hawaii law does not provide a lower BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. Under §§291-3.1-291-3.3 it is illegal for any person to store open container of alcohol, consume or possess intoxicating liquor while a passenger in or while operating a motor vehicle. Section 281-101.5 makes it illegal for a minor to possess liquor in any vehicle.

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the **March 11, 1993 Safety Recommendations Report of the National Transportation Safety Board,**

♦ Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.

♦ West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.

♦ 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.

♦ 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.

♦ 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.

♦ 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:
ID:minors <16 can drive during the daytime only
IL:minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA:minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD:minors <16 cannot drive between 12am-5am
MA:minors <18 cannot drive between 1am-4am
NY:minors <18 cannot drive between 9pm-5am
PA:minors <18 cannot drive between 12am-5am
SD:minors <16 cannot drive between 8pm-6am.